

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, sold, retired, separated, and reinstated and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(d) For each compliance year, each party subject to the attest engagement requirements under this section shall cause the reports required under this section to be submitted to EPA by May 31 of the year following the compliance year.

(e) The party conducting the procedures under this section shall obtain a written representation from a company representative that the copies of the reports required under this section are complete and accurate copies of the reports filed with EPA.

(f) The party conducting the procedures under this section shall identify and report as a finding the commercial computer program used by the party to track the data required by the regulations in this subpart, if any.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26048, May 10, 2010; 75 FR 79978, Dec. 21, 2010; 77 FR 1357, Jan. 9, 2012]

**§ 80.1465 What are the additional requirements under this subpart for foreign small refiners, foreign small refineries, and importers of RFS-FRFUEL?**

(a) *Definitions.* The following additional definitions apply for this subpart:

(1) *Foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively

referred to in this section as “the United States”).

(2) *Foreign refiner* is a person that meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Foreign small refinery* is a foreign refinery that has received a small refinery exemption under § 80.1441.

(4) *Foreign small refiner* is a foreign refiner that has received a small refiner exemption under § 80.1442.

(5) *RFS-FRFUEL* is transportation fuel produced at a foreign refinery that has received a small refinery exemption under § 80.1441 or by a foreign refiner with a small refiner exemption under § 80.1442.

(6) *Non-RFS-FRFUEL* is transportation fuel produced at a foreign refinery that has not received a small refinery exemption under § 80.1441 or by a foreign refiner that has not received a small refiner exemption under § 80.1442.

(b) *General requirements for RFS-FRFUEL for foreign small refineries and small refiners.* A foreign refiner must do all the following:

(1) Designate, at the time of production, each batch of transportation fuel produced at the foreign refinery that is exported for use in the United States as RFS-FRFUEL.

(2) Meet all requirements that apply to refiners who have received a small refinery or small refiner exemption under this subpart.

(c) *Designation, foreign small refiner certification, and product transfer documents.*

(1) Any foreign small refiner must designate each batch of RFS-FRFUEL as such at the time the transportation fuel is produced.

(2) On each occasion when RFS-FRFUEL is loaded onto a vessel or other transportation mode for transport to the United States, the foreign small refiner shall prepare a certification for each batch of RFS-FRFUEL that meets all the following requirements:

(i) The certification shall include the report of the independent third party under paragraph (d) of this section, and all the following additional information:

(A) The name and EPA registration number of the refinery that produced the RFS-FRFUEL.

(B) [Reserved]

(ii) The identification of the transportation fuel as RFS-FRFUEL.

(iii) The volume of RFS-FRFUEL being transported, in gallons.

(3) On each occasion when any person transfers custody or title to any RFS-FRFUEL prior to its being imported into the United States, it must include all the following information as part of the product transfer document information:

(i) Designation of the transportation fuel as RFS-FRFUEL.

(ii) The certification required under paragraph (c)(2) of this section.

(d) *Load port independent testing and refinery identification.*

(1) On each occasion that RFS-FRFUEL is loaded onto a vessel for transport to the United States the foreign small refiner shall have an independent third party do all the following:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms.

(ii) Determine the volume of RFS-FRFUEL loaded onto the vessel, temperature-corrected to 60 °F (exclusive of any tank bottoms before loading).

(iii) Obtain the EPA-assigned registration number of the foreign refinery.

(iv) Determine the name and country of registration of the vessel used to transport the RFS-FRFUEL to the United States.

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(vi) Review original documents that reflect movement and storage of the RFS-FRFUEL from the foreign refinery to the load port, and from this review determine:

(A) The refinery at which the RFS-FRFUEL was produced; and

(B) That the RFS-FRFUEL remained segregated from Non-RFS-FRFUEL and other RFS-FRFUEL produced at a different refinery.

(2) The independent third party shall submit a report to all the following:

(i) The foreign small refiner or owner of the foreign small refinery, containing the information required under paragraph (d)(1) of this section, to ac-

company the product transfer documents for the vessel.

(ii) The Administrator, containing the information required under paragraph (d)(1) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the transportation fuel was produced, assurance that the transportation fuel remained segregated as specified in paragraph (j)(1) of this section, and a description of the transportation fuel's movement and storage between production at the source refinery and vessel loading.

(3) The independent third party must do all the following:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (d).

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii).

(iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities, facilities, and documents relevant to compliance with the requirements of this paragraph (d).

(e) *Comparison of load port and port of entry testing.*

(1)(i) Any foreign small refiner or foreign small refinery and any United States importer of RFS-FRFUEL shall compare the results from the load port testing under paragraph (d) of this section, with the port of entry testing as reported under paragraph (k) of this section, for the volume of transportation fuel, except as specified in paragraph (e)(1)(ii) of this section.

(ii) Where a vessel transporting RFS-FRFUEL offloads this transportation fuel at more than one United States port of entry, the requirements of paragraph (e)(1)(i) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner that the requirements of paragraph (e)(1)(i) of this section were met and that the vessel has not loaded any transportation fuel or blendstock between the first United States port of entry and any subsequent port of entry.

(2) If the temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent, the United States importer and the foreign small refiner or foreign small refinery shall not treat the transportation fuel as RFS-FRFUEL and the importer shall include the volume of transportation fuel in the importer's RFS compliance calculations.

(f) *Foreign refiner commitments.* Any foreign small refinery or foreign small refiner shall commit to and comply with the provisions contained in this paragraph (f) as a condition to being approved for a small refinery or small refiner exemption under this subpart.

(1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Transportation fuel is produced;

(B) Documents related to refinery operations are kept; and

(C) RFS-FRFUEL is stored or transported between the foreign refinery and the United States, including storage tanks, vessels, and pipelines.

(iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits may include review and copying of any documents related to all the following:

(A) The volume of RFS-FRFUEL.

(B) The proper classification of transportation fuel as being RFS-FRFUEL or as not being RFS-FRFUEL.

(C) Transfers of title or custody to RFS-FRFUEL.

(D) Testing of RFS-FRFUEL.

(E) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits may include interviewing employees.

(vii) Any employee of the foreign refiner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia shall be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting an application for a small refinery or small refiner exemption, or producing and exporting transportation fuel under such exemption, and all other actions to comply with the requirements of this subpart relating to such exemption constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign refiner, or its agents or employees, will not seek to detain or

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to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph (f) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where RFS-FRFUEL produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the RFS-FRFUEL to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (f)(1) through (f)(7) of this section, and these commitments shall be included in the foreign refiner's application for a small refinery or small refiner exemption under this subpart.

(g) *Sovereign immunity.* By submitting an application for a small refinery or small refiner exemption under this subpart, or by producing and exporting transportation fuel to the United States under such exemption, the foreign refiner, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(h) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (h) as a condition to approval of a foreign small refinery or foreign small refiner exemption under this subpart.

(1) The foreign refiner shall post a bond of the amount calculated using the following equation:

$$\text{Bond} = G * \$ 0.01$$

Where:

Bond = amount of the bond in United States dollars.

G = the largest volume of transportation fuel produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the refinery's or refiner's application is submitted, the calendar year the application is submitted, and each succeeding calendar year.

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

(3) Bonds posted under this paragraph (h) shall:

(i) Be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds"; and

(iii) Include a commitment that the bond will remain in effect for at least five years following the end of latest annual reporting period that the foreign refiner produces transportation fuel pursuant to the requirements of this subpart.

(4) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(5) If the bond amount for a foreign refiner increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond

amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(i) *English language reports.* Any document submitted to EPA by a foreign refiner shall be in English, or shall include an English language translation.

(j) *Prohibitions.*—(1) No person may combine RFS-FRFUEL with any Non-RFS-FRFUEL, and no person may combine RFS-FRFUEL with any RFS-FRFUEL produced at a different refinery, until the importer has met all the requirements of paragraph (k) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (j)(1) of this section, or that otherwise violates the requirements of this section.

(k) *United States importer requirements.* Any United States importer of RFS-FRFUEL shall meet the following requirements:

(1) Each batch of imported RFS-FRFUEL shall be classified by the importer as being RFS-FRFUEL.

(2) Transportation fuel shall be classified as RFS-FRFUEL according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (c) of this section. Additionally, the importer shall comply with all requirements of this subpart applicable to importers.

(3) For each transportation fuel batch classified as RFS-FRFUEL, any United States importer shall have an independent third party do all the following:

(i) Determine the volume of transportation fuel in the vessel.

(ii) Use the foreign refiner's RFS-FRFUEL certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the RFS-FRFUEL.

(iii) Determine the name and country of registration of the vessel used to transport the RFS-FRFUEL to the United States.

(iv) Determine the date and time the vessel arrives at the United States port of entry.

(4) Any importer shall submit reports within 30 days following the date any

vessel transporting RFS-FRFUEL arrives at the United States port of entry to:

(i) The Administrator, containing the information determined under paragraph (k)(3) of this section; and

(ii) The foreign refiner, containing the information determined under paragraph (k)(3)(i) of this section, and including identification of the port at which the product was off loaded.

(5) Any United States importer shall meet all other requirements of this subpart for any imported transportation fuel that is not classified as RFS-FRFUEL under paragraph (k)(2) of this section.

(1) *Truck imports of RFS-FRFUEL produced at a foreign refinery.* (1) Any refiner whose RFS-FRFUEL is transported into the United States by truck may petition EPA to use alternative procedures to meet all the following requirements:

(i) Certification under paragraph (c)(2) of this section.

(ii) Load port and port of entry testing requirements under paragraphs (d) and (e) of this section.

(iii) Importer testing requirements under paragraph (k)(3) of this section.

(2) These alternative procedures must ensure RFS-FRFUEL remains segregated from Non-RFS-FRFUEL until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses all the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of RFS-FRFUEL from that refinery from all other transportation fuel.

(ii) Contracts with any terminals and/or pipelines that receive and/or transport RFS-FRFUEL that prohibit the commingling of RFS-FRFUEL with Non-RFS-FRFUEL or RFS-FRFUEL from other foreign refineries.

(iii) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all RFS-FRFUEL remains segregated throughout the distribution system.

(3) The petition described in this section must be submitted to EPA along

with the application for a small refinery or small refiner exemption under this subpart.

(m) *Additional attest requirements for importers of RFS-FRFUEL.* The following additional procedures shall be carried out by any importer of RFS-FRFUEL as part of the attest engagement required for importers under this subpart M.

(1) Obtain listings of all tenders of RFS-FRFUEL. Agree the total volume of tenders from the listings to the transportation fuel inventory reconciliation analysis required in §80.133(b), and to the volumes determined by the third party under paragraph (d) of this section.

(2) For each tender under paragraph (m)(1) of this section, where the transportation fuel is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of RFS-FRFUEL loaded onto each vessel.

(3) Select a sample from the list of vessels identified per paragraph (m)(2) of this section used to transport RFS-FRFUEL, in accordance with the guidelines in §80.127, and for each vessel selected perform all the following:

(i) Obtain the report of the independent third party, under paragraph (d) of this section.

(A) Agree the information in these reports with regard to vessel identification and transportation fuel volume.

(B) Identify, and report as a finding, each occasion the load port and port of entry volume results differ by more than the amount allowed in paragraph (e)(2) of this section, and determine whether all of the requirements of paragraph (e)(2) of this section have been met.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the RFS-FRFUEL from the refinery to the load port, under paragraph (d) of this section. Obtain tank activity records for any storage tank where the RFS-FRFUEL is stored, and pipeline activity records for any pipeline used to transport the RFS-FRFUEL prior to being loaded onto the vessel. Use these records to determine whether the RFS-FRFUEL was produced at the refinery that is the subject of the attest engage-

ment, and whether the RFS-FRFUEL was mixed with any Non-RFS-FRFUEL or any RFS-FRFUEL produced at a different refinery.

(4) Select a sample from the list of vessels identified per paragraph (m)(2) of this section used to transport RFS-FRFUEL, in accordance with the guidelines in §80.127, and for each vessel selected perform all of the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(5) Obtain separate listings of all tenders of RFS-FRFUEL, and perform all the following:

(i) Agree the volume of tenders from the listings to the transportation fuel inventory reconciliation analysis in §80.133(b).

(ii) Obtain a separate listing of the tenders under this paragraph (m)(5) where the transportation fuel is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in §80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the transportation fuel was off loaded for the selected vessels. Determine and report as a finding the country where the transportation fuel was off loaded for each vessel selected.

(6) In order to complete the requirements of this paragraph (m), an auditor shall do all the following:

(i) Be independent of the foreign refiner or importer.

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§80.125 through 80.127, 80.130, 80.1464, and this paragraph (m).

(iii) Sign a commitment that contains the provisions specified in paragraph (f) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.127, 80.130, 80.1464, and this paragraph (m).

(n) *Withdrawal or suspension of foreign small refiner or foreign small refinery status.* EPA may withdraw or suspend a foreign refiner's small refinery or small refiner exemption where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (f)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (h) of this section.

(o) *Additional requirements for applications, reports and certificates.* Any application for a small refinery or small refiner exemption, alternative procedures under paragraph (l) of this section, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration: "I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief

after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1465 apply to [INSERT NAME OF FOREIGN REFINER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years."

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26048, May 10, 2010; 77 FR 1357, Jan. 9, 2012]

**§ 80.1466 What are the additional requirements under this subpart for RIN- generating foreign producers and importers of renewable fuels for which RINs have been generated by the foreign producer?**

(a) *Foreign producer of renewable fuel.* For purposes of this subpart, a foreign producer of renewable fuel is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States") that has been approved by EPA to generate RINs for renewable fuel it produces for export to the United States, hereinafter referred to as a "foreign producer" under this section.

(b) *General requirements.* An approved foreign producer under this section must meet all requirements that apply to renewable fuel producers under this subpart.

(c) *Designation, foreign producer certification, and product transfer documents.* (1) Any approved foreign producer under this section that generates RINs for renewable fuel must designate each batch of such renewable fuel as "RFS-FRRF" at the time the renewable fuel is produced.

(2) On each occasion when RFS-FRRF is transferred for transport to a vessel or loaded onto a vessel or other transportation mode for transport to the United States, the RIN-generating foreign producer shall prepare a certification for each batch of RFS-FRRF;